

Form **990**Department of the Treasury  
Internal Revenue Service**Return of Organization Exempt From Income Tax**Under section 501(c), 527, or 4947(a)(1) of the Internal Revenue Code (except black lung  
benefit trust or private foundation)

▶ The organization may have to use a copy of this return to satisfy state reporting requirements

OMB No 1545-0047

**2003**Open to Public  
Inspection**A** For the 2003 calendar year, or tax year beginning

and ending

**B** Check if  
applicable

- ☐ Address  
change
- ☐ Name  
change
- ☐ Initial  
return
- ☐ Final  
return
- ☐ Amended  
return
- ☐ Application  
pending

Please  
use IRS  
label or  
print or  
type  
See  
Specific  
Instruc-  
tions**C** Name of organization

ATLANTIC LEGAL FOUNDATION

Number and street (or P O box if mail is not delivered to street address)

150 EAST 42ND STREET, 2ND FLOOR

Room/suite

City or town, state or country, and ZIP + 4

NEW YORK, NY 10017

**D** Employer identification number

23-2022920

**E** Telephone number

(212) 573-1960

**F** Accounting method☐ Cash☒ Accrual☐ Other  
(specify) ▶• Section 501(c)(3) organizations and 4947(a)(1) nonexempt charitable trusts  
must attach a completed Schedule A (Form 990 or 990-EZ).**H and I are not applicable to section 527 organizations.****H(a)** Is this a group return for affiliates? ☐ Yes ☒ No**H(b)** If "Yes," enter number of affiliates ▶**H(c)** Are all affiliates included? N/A ☐ Yes ☐ No**H(d)** Is this a separate return filed by an or-  
ganization covered by a group ruling? ☐ Yes ☒ No**I** Group Exemption Number ▶**M** Check ☐ if the organization is **not** required to attach  
Sch. B (Form 990, 990-EZ, or 990-PF)**G** Website: ▶ WWW.ATLANTICLEGAL.ORG**J** Organization type (check only one) ☒ 501(c) ( 3 ) (insert no) ☐ 4947(a)(1) or ☐ 527**K** Check here ☐ if the organization's gross receipts are normally not more than \$25,000. The  
organization need not file a return with the IRS, but if the organization received a Form 990 Package  
in the mail, it should file a return without financial data. **Some states require a complete return.****L** Gross receipts Add lines 6b, 8b, 9b, and 10b to line 12 ▶

725,179.

**Part 1 Revenue, Expenses, and Changes in Net Assets or Fund Balances**

Revenue	1	Contributions, gifts, grants, and similar amounts received				
	a	Direct public support	1a	349,888.		
	b	Indirect public support	1b			
	c	Government contributions (grants)	1c			
	d	Total (add lines 1a through 1c) (cash \$ 349,888. noncash \$ )	1d	349,888.		
	2	Program service revenue including government fees and contracts (from Part VII, line 93)	2			
	3	Membership dues and assessments	3			
	4	Interest on savings and temporary cash investments	4	2,158.		
	5	Dividends and interest from securities	5			
	6a	Gross rents	6a			
b	Less rental expenses	6b				
c	Net rental income or (loss) (subtract line 6b from line 6a)	6c				
7	Other investment income (describe ▶)	7				
Expenses	8a	Gross amount from sales of assets other than inventory	(A) Securities		(B) Other	
	b	Less cost or other basis and sales expenses	8a			
	c	Gain or (loss) (attach schedule)	8b			
	d	Net gain or (loss) (combine line 8c, columns (A) and (B))	8c			
	8d					
	9	Special events and activities (attach schedule). If any amount is from gaming, check here <input type="checkbox"/>				
	a	Gross revenue (not including \$ 0. of contributions reported on line 1a)	9a	118,657.		
	b	Less direct expenses other than fundraising expenses	9b	35,146.		
	c	Net income or (loss) from special events (subtract line 9b from line 9a)	9c	83,511.		
	10a	Gross sales of inventory, less returns and allowances	10a			
b	Less cost of goods sold	10b				
c	Gross profit or (loss) from sales of inventory (attach schedule) (subtract line 10b from line 10a)	10c				
11	Other revenue (from Part VII, line 103)	11	254,476.			
12	Total revenue (add lines 1d, 2, 3, 4, 5, 6c, 7, 8d, 9c, 10c, and 11)	12	690,033.			
13	Program services (from line 44, column (B))	13	360,584.			
14	Management and general (from line 44, column (C))	14	100,751.			
15	Fundraising (from line 44, column (D))	15	67,772.			
16	Payments to affiliates (attach schedule)	16				
17	Total expenses (add lines 16 and 44, column (A))	17	529,107.			
18	Excess or (deficit) for the year (subtract line 17 from line 12)	18	160,926.			
19	Net assets or fund balances at beginning of year (from line 73, column (A))	19	125,005.			
20	Other changes in net assets or fund balances (attach explanation)	20	0.			
21	Net assets or fund balances at end of year (combine lines 18, 19, and 20)	21	285,931.			

RECEIVED

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OGDEN, UT

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LHA For Paperwork Reduction Act Notice, see the separate instructions.

Form 990 (2003)

**Part II Statement of Functional Expenses**

All organizations must complete column (A) Columns (B), (C), and (D) are required for section 501(c)(3) and (4) organizations and section 4947(a)(1) nonexempt charitable trusts but optional for others

Page 2

Do not include amounts reported on line 6b, 8b, 9b, 10b, or 16 of Part I.		(A) Total	(B) Program services	(C) Management and general	(D) Fundraising
22	Grants and allocations (attach schedule)				
	cash \$ _____ noncash \$ _____	22			
23	Specific assistance to individuals (attach schedule)	23			
24	Benefits paid to or for members (attach schedule)	24			
25	Compensation of officers, directors, etc	25	291,910.	35,029.	37,948.
26	Other salaries and wages	26	45,842.	5,501.	5,960.
27	Pension plan contributions	27	45,627.	5,475.	5,932.
28	Other employee benefits	28			
29	Payroll taxes	29	20,878.	2,505.	2,714.
30	Professional fundraising fees	30			
31	Accounting fees	31	10,900.	10,900.	
32	Legal fees	32			
33	Supplies	33	3,356.	403.	436.
34	Telephone	34	1,866.	224.	242.
35	Postage and shipping	35	3,614.	1,800.	1,591.
36	Occupancy	36			
37	Equipment rental and maintenance	37	3,897.	468.	507.
38	Printing and publications	38	8,406.	672.	6,201.
39	Travel	39	9,392.	1,127.	1,221.
40	Conferences, conventions, and meetings	40	18,352.	10,135.	2,715.
41	Interest	41			
42	Depreciation, depletion, etc (attach schedule)	42	1,601.	1,601.	
43	Other expenses not covered above (itemize).				
a	INSURANCE	43a	15,718.	1,896.	0.
b	SUBSCRIPTIONS	43b	2,181.	131.	60.
c	MISCELLANEOUS	43c	9,207.	8,286.	645.
d	OTHER PROF SERVICES	43d	16,198.	14,598.	1,600.
e	LEGAL SUPPORT SERVICES	43e	20,162.	20,162.	
44	Total functional expenses (add lines 22 through 43) Organizations completing columns (B)-(D), carry these totals to lines 13-15	44	529,107.	360,584.	67,772.

Joint Costs. Check ☐ if you are following SOP 98-2.

Are any joint costs from a combined educational campaign and fundraising solicitation reported in (B) Program services?

Yes ☐ No ☒

If "Yes," enter (i) the aggregate amount of these joint costs \$ \_\_\_\_\_; (ii) the amount allocated to Program services \$ \_\_\_\_\_;

(iii) the amount allocated to Management and general \$ \_\_\_\_\_, and (iv) the amount allocated to Fundraising \$ \_\_\_\_\_

**Part III Statement of Program Service Accomplishments**What is the organization's primary exempt purpose? ☐

PUBLIC INTEREST LAW FIRM

All organizations must describe their exempt purpose achievements in a clear and concise manner. State the number of clients served, publications issued, etc. Discuss achievements that are not measurable (Section 501(c)(3) and (4) organizations and 4947(a)(1) nonexempt charitable trusts must also enter the amount of grants and allocations to others.)

Program Service Expenses  
(Required for 501(c)(3) and (4) orgs., and 4947(a)(1) trusts, but optional for others.)**a SEE ATTACHED STATEMENT 5 - SUMMARY OF 2003 CASES**

(Grants and allocations \$ \_\_\_\_\_) 360,584.

**b DONATED SERVICES INCLUDE RENT AND ACCOUNTING SERVICES TOTALING \$43,895 AND \$2,400 RESPECTIVELY**

(Grants and allocations \$ \_\_\_\_\_)

**c**

(Grants and allocations \$ \_\_\_\_\_)

**d**

(Grants and allocations \$ \_\_\_\_\_)

**e Other program services (attach schedule)**

(Grants and allocations \$ \_\_\_\_\_)

**f Total of Program Service Expenses (should equal line 44, column (B), Program services)**

360,584.

**Part IV Balance Sheets**

**Note:** Where required, attached schedules and amounts within the description column should be for end-of-year amounts only.

		(A) Beginning of year		(B) End of year
<b>Assets</b>	45 Cash - non-interest-bearing	35,201.	45	2,919.
	46 Savings and temporary cash investments	57,464.	46	323,861.
	47 a Accounts receivable	47a		
	b Less: allowance for doubtful accounts	47b	47c	
	48 a Pledges receivable	48a	11,700.	
	b Less: allowance for doubtful accounts	48b		
	49 Grants receivable		49	
	50 Receivables from officers, directors, trustees, and key employees		50	
	51 a Other notes and loans receivable	51a		
	b Less: allowance for doubtful accounts	51b	51c	
	52 Inventories for sale or use		52	
	53 Prepaid expenses and deferred charges	41,582.	53	470.
	54 Investments - securities	<input type="checkbox"/> Cost <input type="checkbox"/> FMV	54	
	55 a Investments - land, buildings, and equipment: basis	55a		
	b Less: accumulated depreciation	55b	55c	
56 Investments - other		56		
57 a Land, buildings, and equipment: basis	57a	45,557.		
b Less: accumulated depreciation	57b	45,557.		
58 Other assets (describe <input type="checkbox"/> STMT 3 <input type="checkbox"/> )		1,601.	57c	
58		58		
59 Total assets (add lines 45 through 58) (must equal line 74)	153,548.	59	338,950.	
<b>Liabilities</b>	60 Accounts payable and accrued expenses	28,543.	60	23,019.
	61 Grants payable		61	
	62 Deferred revenue		62	30,000.
	63 Loans from officers, directors, trustees, and key employees		63	
	64 a Tax-exempt bond liabilities		64a	
	b Mortgages and other notes payable		64b	
	65 Other liabilities (describe <input type="checkbox"/> )		65	
	66 Total liabilities (add lines 60 through 65)	28,543.	66	53,019.
<b>Net Assets or Fund Balances</b>	Organizations that follow SFAS 117, check here <input type="checkbox"/> and complete lines 67 through 69 and lines 73 and 74			
	67 Unrestricted		67	
	68 Temporarily restricted		68	
	69 Permanently restricted		69	
	Organizations that do not follow SFAS 117, check here <input checked="" type="checkbox"/> and complete lines 70 through 74			
	70 Capital stock, trust principal, or current funds	125,005.	70	285,931.
	71 Paid-in or capital surplus, or land, building, and equipment fund	0.	71	0.
	72 Retained earnings, endowment, accumulated income, or other funds	0.	72	0.
73 Total net assets or fund balances (add lines 67 through 69 or lines 70 through 72, column (A) must equal line 19, column (B) must equal line 21)	125,005.	73	285,931.	
74 Total liabilities and net assets / fund balances (add lines 66 and 73)	153,548.	74	338,950.	

Form 990 is available for public inspection and, for some people, serves as the primary or sole source of information about a particular organization. How the public perceives an organization in such cases may be determined by the information presented on its return. Therefore, please make sure the return is complete and accurate and fully describes, in Part III, the organization's programs and accomplishments.

<b>Part IV-B</b>	<b>Reconciliation of Expenses per Audited Financial Statements with Expenses per Return</b>
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<b>a</b> Total revenue, gains, and other support per audited financial statements	<b>a</b> 736,328.	<b>a</b> Total expenses and losses per audited financial statements	<b>a</b> 575,402.
<b>b</b> Amounts included on line <b>a</b> but not on line 12, Form 990		<b>b</b> Amounts included on line <b>a</b> but not on line 17, Form 990	
(1) Net unrealized gains on investments \$		(1) Donated services and use of facilities \$ 46,295.	
(2) Donated services and use of facilities \$ 46,295.		(2) Prior year adjustments reported on line 20, Form 990 \$	
(3) Recoveries of prior year grants \$		(3) Losses reported on line 20, Form 990 \$	
(4) Other (specify) \$		(4) Other (specify) \$	
Add amounts on lines (1) through (4)	<b>b</b> 46,295.	Add amounts on lines (1) through (4)	<b>b</b> 46,295.
<b>c</b> Line <b>a</b> minus line <b>b</b>	<b>c</b> 690,033.	<b>c</b> Line <b>a</b> minus line <b>b</b>	<b>c</b> 529,107.
<b>d</b> Amounts included on line 12, Form 990 but not on line <b>a</b> :		<b>d</b> Amounts included on line 17, Form 990 but not on line <b>a</b> :	
(1) Investment expenses not included on line 6b, Form 990 \$		(1) Investment expenses not included on line 6b, Form 990 \$	
(2) Other (specify) \$		(2) Other (specify) \$	
Add amounts on lines (1) and (2)	<b>d</b> 0.	Add amounts on lines (1) and (2)	<b>d</b> 0.
<b>e</b> Total revenue per line 12, Form 990 (line <b>c</b> plus line <b>d</b> )	<b>e</b> 690,033.	<b>e</b> Total expenses per line 17, Form 990 (line <b>c</b> plus line <b>d</b> )	<b>e</b> 529,107.

<b>Part V</b>	<b>List of Officers, Directors, Trustees, and Key Employees</b> (List each one even if not compensated.)
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[illegible]

75 Did any officer, director, trustee, or key employee receive aggregate compensation of more than \$100,000 from your organization and all related organizations, of which more than \$10,000 was provided by the related organizations? If "Yes," attach schedule ☐ Yes ☒ No

Yes	No
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**Part VII Analysis of Income-Producing Activities** (See page 33 of the instructions.)

Note: Enter gross amounts unless otherwise indicated.

	Unrelated business income		Excluded by section 512, 513, or 514		(E) Related or exempt function income
	(A) Business code	(B) Amount	(C) Exclu- sion code	(D) Amount	
93 Program service revenue					
a _____					
b _____					
c _____					
d _____					
e _____					
f Medicare/Medicaid payments					
g Fees and contracts from government agencies					
94 Membership dues and assessments					
95 Interest on savings and temporary cash investments			14	2,158.	
96 Dividends and interest from securities					
97 Net rental income or (loss) from real estate					
a debt-financed property					
b not debt-financed property					
98 Net rental income or (loss) from personal property ..					
99 Other investment income					
100 Gain or (loss) from sales of assets other than inventory					
101 Net income or (loss) from special events					83,511.
102 Gross profit or (loss) from sales of inventory					
103 Other revenue:					
a AWARDED LEGAL FEES			01	254,476.	
b _____					
c _____					
d _____					
e _____					
104 Subtotal (add columns (B), (D), and (E))		0.		256,634.	83,511.
105 Total (add line 104, columns (B), (D), and (E))					340,145.

Note: Line 105 plus line 1d, Part I, should equal the amount on line 12, Part I.

**Part VIII Relationship of Activities to the Accomplishment of Exempt Purposes** (See page 34 of the instructions.)

Line No.	Explain how each activity for which income is reported in column (E) of Part VII contributed importantly to the accomplishment of the organization's exempt purposes (other than by providing funds for such purposes)
101	ANNUAL DINNER SPECIAL EVENT

**Part IX Information Regarding Taxable Subsidiaries and Disregarded Entities** (See page 34 of the instructions.)

(A) Name, address, and EIN of corporation, partnership, or disregarded entity	(B) Percentage of ownership interest	(C) Nature of activities	(D) Total income	(E) End-of-year assets
N/A	%			
	%			
	%			
	%			

**Part X Information Regarding Transfers Associated with Personal Benefit Contracts** (See page 34 of the instructions.)(a) Did the organization, during the year, receive any funds, directly or indirectly, to pay premiums on a personal benefit contract? ☐ Yes ☒ No(b) Did the organization, during the year, pay premiums, directly or indirectly, on a personal benefit contract? ☐ Yes ☒ No

Note: If "Yes" to (b), file Form 8870 and Form 4720 (see instructions).

Please Sign Here	Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than officer) is based on all information of which preparer has any knowledge.	
	Signature of officer <i>William H. Slater</i>	Date May 17, 2004
Paid Preparer's Use Only	Preparer's signature <i>William H. Slater</i>	Date 5/14/04
	Firm's name (or yours if self-employed), address, and ZIP + 4 SIEGFRIED & SCHIEFFER, LLP 1201 MARKET STREET, SUITE 700 WILMINGTON, DE 19801	Check if self-employed <input type="checkbox"/> Preparer's SSN or PTIN 226-62-2200
323161 12-17-03	EIN 3231611217	Phone no (302) 984-1800

Department of the Treasury  
Internal Revenue Service

► **MUST** be completed by the above organizations and attached to their Form 990 or 990-EZ

OMB No 1545-0047

# 2003

ATLANTIC LEGAL FOUNDATION

23 2022920

(See page 1 of the instructions List each one If there are none, enter "None")

**Total number of other employees paid over \$50,000**

(See page 2 of the instructions. List each one (whether individuals or firms) If there are none, enter "None ")

**Total number of others receiving over \$50,000 for professional services**

**Part III** Statements About Activities (See page 2 of the instructions)

Yes No

1	During the year, has the organization attempted to influence national, state, or local legislation, including any attempt to influence public opinion on a legislative matter or referendum? If "Yes," enter the total expenses paid or incurred in connection with the lobbying activities <b>\$</b> _____ <b>\$</b> _____ (Must equal amounts on line 38, Part VI-A, or line i of Part VI-B ) Organizations that made an election under section 501(h) by filing Form 5768 must complete Part VI-A Other organizations checking "Yes," must complete Part VI-B AND attach a statement giving a detailed description of the lobbying activities	1		X
2	During the year, has the organization, either directly or indirectly, engaged in any of the following acts with any substantial contributors, trustees, directors, officers, creators, key employees, or members of their families, or with any taxable organization with which any such person is affiliated as an officer, director, trustee, majority owner, or principal beneficiary? (If the answer to any question is "Yes," attach a detailed statement explaining the transactions.)			
a	Sale, exchange, or leasing of property?	2a		X
b	Lending of money or other extension of credit?	2b		X
c	Furnishing of goods, services, or facilities?	2c		X
d	Payment of compensation (or payment or reimbursement of expenses if more than \$1,000)? SEE PART V, FORM 990	2d	X	
e	Transfer of any part of its income or assets?	2e		X
3 a	Do you make grants for scholarships, fellowships, student loans, etc.? (If "Yes," attach an explanation of how you determine that recipients qualify to receive payments )	3a		X
b	Do you have a section 403(b) annuity plan for your employees?	3b		X
4	Did you maintain any separate account for participating donors where donors have the right to provide advice on the use or distribution of funds?	4		X

**Part IV** Reason for Non-Private Foundation Status (See pages 3 through 6 of the instructions)

The organization is not a private foundation because it is. (Please check only ONE applicable box )

5	<input type="checkbox"/> A church, convention of churches, or association of churches. Section 170(b)(1)(A)(i)
6	<input type="checkbox"/> A school Section 170(b)(1)(A)(ii) (Also complete Part V.)
7	<input type="checkbox"/> A hospital or a cooperative hospital service organization. Section 170(b)(1)(A)(iii)
8	<input type="checkbox"/> A Federal, state, or local government or governmental unit. Section 170(b)(1)(A)(v)
9	<input type="checkbox"/> A medical research organization operated in conjunction with a hospital Section 170(b)(1)(A)(iii). Enter the hospital's name, city, and state <b>▶</b> _____
10	<input type="checkbox"/> An organization operated for the benefit of a college or university owned or operated by a governmental unit. Section 170(b)(1)(A)(iv) (Also complete the <b>Support Schedule</b> in Part IV-A )
11a	<input checked="" type="checkbox"/> An organization that normally receives a substantial part of its support from a governmental unit or from the general public Section 170(b)(1)(A)(vi). (Also complete the <b>Support Schedule</b> in Part IV-A.)
11b	<input type="checkbox"/> A community trust. Section 170(b)(1)(A)(vi). (Also complete the <b>Support Schedule</b> in Part IV-A.)
12	<input type="checkbox"/> An organization that normally receives: (1) more than 33 1/3% of its support from contributions, membership fees, and gross receipts from activities related to its charitable, etc., functions - subject to certain exceptions, and (2) no more than 33 1/3% of its support from gross investment income and unrelated business taxable income (less section 511 tax) from businesses acquired by the organization after June 30, 1975. See section 509(a)(2) (Also complete the <b>Support Schedule</b> in Part IV-A.)
13	<input type="checkbox"/> An organization that is not controlled by any disqualified persons (other than foundation managers) and supports organizations described in (1) lines 5 through 12 above, or (2) section 501(c)(4), (5), or (6), if they meet the test of section 509(a)(2) (See section 509(a)(3) )

Provide the following information about the supported organizations (See page 5 of the instructions)

(a) Name(s) of supported organization(s)	(b) Line number from above

14	<input type="checkbox"/> An organization organized and operated to test for public safety Section 509(a)(4) (See page 6 of the instructions)
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**Part IV-A****Support Schedule** (Complete only if you checked a box on line 10, 11, or 12.) **Use cash method of accounting.****Note:** You may use the worksheet in the instructions for converting from the accrual to the cash method of accounting.

Calendar year (or fiscal year beginning in)	(a) 2002	(b) 2001	(c) 2000	(d) 1999	(e) Total
15 Gifts, grants, and contributions received (Do not include unusual grants. See line 28.)	477,358.	454,853.	442,047.	430,845.	1,805,103.
16 Membership fees received					
17 Gross receipts from admissions, merchandise sold or services performed, or furnishing of facilities in any activity that is related to the organization's charitable, etc., purpose					
18 Gross income from interest, dividends, amounts received from payments on securities loans (section 512(a)(5)), rents, royalties, and unrelated business taxable income (less section 511 taxes) from businesses acquired by the organization after June 30, 1975	453.	959.	4,333.	2,313.	8,058.
19 Net income from unrelated business activities not included in line 18					
20 Tax revenues levied for the organization's benefit and either paid to it or expended on its behalf					
21 The value of services or facilities furnished to the organization by a governmental unit without charge. Do not include the value of services or facilities generally furnished to the public without charge.					
22 Other income. Attach a schedule Do not include gain or (loss) from sale of capital assets			SEE STATEMENT 4	231,000.	231,000.
23 Total of lines 15 through 22	477,811.	455,812.	446,380.	664,158.	2,044,161.
24 Line 23 minus line 17	477,811.	455,812.	446,380.	664,158.	2,044,161.
25 Enter 1% of line 23	4,778.	4,558.	4,464.	6,642.	

26 Organizations described on lines 10 or 11: a Enter 2% of amount in column (e), line 24	26a	40,883.
b Prepare a list for your records to show the name of and amount contributed by each person (other than a governmental unit or publicly supported organization) whose total gifts for 1999 through 2002 exceeded the amount shown in line 26a. Do not file this list with your return. Enter the total of all these excess amounts	26b	914,385.
c Total support for section 509(a)(1) test Enter line 24, column (e)	26c	2,044,161.
d Add. Amounts from column (e) for lines: 18 8,058. 19 22 231,000. 26b 914,385.	26d	1,153,443.
e Public support (line 26c minus line 26d total)	26e	890,718.
f Public support percentage (line 26e (numerator) divided by line 26c (denominator))	26f	43.5738%

27 Organizations described on line 12: a For amounts included in lines 15, 16, and 17 that were received from a "disqualified person," prepare a list for your records to show the name of, and total amounts received in each year from, each "disqualified person." Do not file this list with your return. Enter the sum of such amounts for each year: N/A				
(2002)	(2001)	(2000)	(1999)	
b For any amount included in line 17 that was received from each person (other than "disqualified persons"), prepare a list for your records to show the name of, and amount received for each year, that was more than the larger of (1) the amount on line 25 for the year or (2) \$5,000. (Include in the list organizations described in lines 5 through 11, as well as individuals.) Do not file this list with your return. After computing the difference between the amount received and the larger amount described in (1) or (2), enter the sum of these differences (the excess amounts) for each year: N/A				
(2002)	(2001)	(2000)	(1999)	
c Add Amounts from column (e) for lines: 15 16 17 20 21				27c N/A
d Add Line 27a total and line 27b total				27d N/A
e Public support (line 27c total minus line 27d total)				27e N/A
f Total support for section 509(a)(2) test Enter amount on line 23, column (e)	27f	N/A		
g Public support percentage (line 27e (numerator) divided by line 27f (denominator))	27g	N/A	%	
h Investment income percentage (line 18, column (e) (numerator) divided by line 27f (denominator))	27h	N/A	%	

28 Unusual Grants: For an organization described in line 10, 11, or 12 that received any unusual grants during 1999 through 2002, prepare a list for your records to show, for each year, the name of the contributor, the date and amount of the grant, and a brief description of the nature of the grant. Do not file this list with your return. Do not include these grants in line 15

**Part V Private School Questionnaire** (See page 7 of the instructions )

N/A

(To be completed ONLY by schools that checked the box on line 6 in Part IV)

	Yes	No
<b>29</b> Does the organization have a racially nondiscriminatory policy toward students by statement in its charter, bylaws, other governing instrument, or in a resolution of its governing body?		
<b>30</b> Does the organization include a statement of its racially nondiscriminatory policy toward students in all its brochures, catalogues, and other written communications with the public dealing with student admissions, programs, and scholarships?		
<b>31</b> Has the organization publicized its racially nondiscriminatory policy through newspaper or broadcast media during the period of solicitation for students, or during the registration period if it has no solicitation program, in a way that makes the policy known to all parts of the general community it serves? If "Yes," please describe; if "No," please explain (If you need more space, attach a separate statement.)		
<hr/>		
<hr/>		
<hr/>		
<b>32</b> Does the organization maintain the following		
<b>a</b> Records indicating the racial composition of the student body, faculty, and administrative staff?		
<b>b</b> Records documenting that scholarships and other financial assistance are awarded on a racially nondiscriminatory basis?		
<b>c</b> Copies of all catalogues, brochures, announcements, and other written communications to the public dealing with student admissions, programs, and scholarships?		
<b>d</b> Copies of all material used by the organization or on its behalf to solicit contributions? If you answered "No" to any of the above, please explain (If you need more space, attach a separate statement )		
<hr/>		
<b>33</b> Does the organization discriminate by race in any way with respect to		
<b>a</b> Students' rights or privileges?		
<b>b</b> Admissions policies?		
<b>c</b> Employment of faculty or administrative staff?		
<b>d</b> Scholarships or other financial assistance?		
<b>e</b> Educational policies?		
<b>f</b> Use of facilities?		
<b>g</b> Athletic programs?		
<b>h</b> Other extracurricular activities? If you answered "Yes" to any of the above, please explain (If you need more space, attach a separate statement )		
<hr/>		
<hr/>		
<b>34 a</b> Does the organization receive any financial aid or assistance from a governmental agency?		
<b>b</b> Has the organization's right to such aid ever been revoked or suspended? If you answered "Yes" to either 34a or b, please explain using an attached statement.		
<b>35</b> Does the organization certify that it has complied with the applicable requirements of sections 4.01 through 4.05 of Rev. Proc. 75-50, 1975-2 C.B. 587, covering racial nondiscrimination? If "No," attach an explanation		

Schedule A (Form 990 or 990-EZ) 2003

**Part VI-A Lobbying Expenditures by Electing Public Charities** (See page 9 of the instructions)

N/A

(To be completed ONLY by an eligible organization that filed Form 5768)

Check ☐ a ☐ if the organization belongs to an affiliated group Check ☐ b ☐ if you checked "a" and "limited control" provisions apply.**Limits on Lobbying Expenditures**

(The term "expenditures" means amounts paid or incurred)

(a)  
Affiliated group  
totals(b)  
To be completed for ALL  
electing organizations

N/A

- 36 Total lobbying expenditures to influence public opinion (grassroots lobbying) . . . . . 36
- 37 Total lobbying expenditures to influence a legislative body (direct lobbying) . . . . . 37
- 38 Total lobbying expenditures (add lines 36 and 37) . . . . . 38
- 39 Other exempt purpose expenditures . . . . . 39
- 40 Total exempt purpose expenditures (add lines 38 and 39) . . . . . 40
- 41 Lobbying nontaxable amount Enter the amount from the following table -
- |  |   |
|--|---|
| <b>If the amount on line 40 is -</b>                 | <b>The lobbying nontaxable amount is -</b>        |
| Not over \$500,000 . . . . .                         | 20% of the amount on line 40                      |
| Over \$500,000 but not over \$1,000,000 . . . . .    | \$100,000 plus 15% of the excess over \$500,000   |
| Over \$1,000,000 but not over \$1,500,000 . . . . .  | \$175,000 plus 10% of the excess over \$1,000,000 |
| Over \$1,500,000 but not over \$17,000,000 . . . . . | \$225,000 plus 5% of the excess over \$1,500,000  |
| Over \$17,000,000 . . . . .                          | \$1,000,000                                       |
- 42 Grassroots nontaxable amount (enter 25% of line 41) . . . . . 42
- 43 Subtract line 42 from line 36 Enter -0- if line 42 is more than line 36 . . . . . 43
- 44 Subtract line 41 from line 38. Enter -0- if line 41 is more than line 38 . . . . . 44

**Caution:** If there is an amount on either line 43 or line 44, you must file Form 4720.**4-Year Averaging Period Under Section 501(h)**

(Some organizations that made a section 501(h) election do not have to complete all of the five columns below. See the instructions for lines 45 through 50 on page 11 of the instructions)

Calendar year (or fiscal year beginning in) ▶	Lobbying Expenditures During 4-Year Averaging Period				N/A
	(a) 2003	(b) 2002	(c) 2001	(d) 2000	(e) Total
45 Lobbying nontaxable amount					0.
46 Lobbying ceiling amount (150% of line 45(e))					0.
47 Total lobbying expenditures					0.
48 Grassroots nontaxable amount					0.
49 Grassroots ceiling amount (150% of line 48(e))					0.
50 Grassroots lobbying expenditures					0.

**Part VI-B Lobbying Activity by Nonelecting Public Charities**

(For reporting only by organizations that did not complete Part VI-A) (See page 12 of the instructions)

N/A

During the year, did the organization attempt to influence national, state or local legislation, including any attempt to influence public opinion on a legislative matter or referendum, through the use of

- a Volunteers
- b Paid staff or management (Include compensation in expenses reported on lines c through h.)
- c Media advertisements
- d Mailings to members, legislators, or the public
- e Publications, or published or broadcast statements
- f Grants to other organizations for lobbying purposes
- g Direct contact with legislators, their staffs, government officials, or a legislative body
- h Rallies, demonstrations, seminars, conventions, speeches, lectures, or any other means
- i Total lobbying expenditures (Add lines c through h.)

Yes	No	Amount
		0.

If "Yes" to any of the above, also attach a statement giving a detailed description of the lobbying activities

**Part VII Information Regarding Transfers To and Transactions and Relationships With Noncharitable Exempt Organizations** (See page 12 of the instructions )

**51** Did the reporting organization directly or indirectly engage in any of the following with any other organization described in section 501(c) of the Code (other than section 501(c)(3) organizations) or in section 527, relating to political organizations?

**a Transfers from the reporting organization to a noncharitable exempt organization of.**

(i) Cash

**(ii) Other assets**

**b Other transactions**

**(i) Sales or exchanges of assets with a noncharitable exempt organization**

**(ii) Purchases of assets from a noncharitable exempt organization**

(iii) Rental of facilities, equipment, or other assets

**(iv) Reimbursement arrangements**

**(v) Loans or loan guarantees**

**(vi) Performance of services or membership or fundraising solicitations**

**c Sharing of facilities, equipment, mailing lists, other assets, or paid employees**

**d** If the answer to any of the above is "Yes," complete the following schedule. Column (b) should always show the fair market value of the goods, other assets, or services given by the reporting organization. If the organization received less than fair market value in any transaction or sharing arrangement, show in column (d) the value of the goods, other assets, or services received.

N/A

	Yes	No
51a(i)		X
a(ii)		X
b(i)		X
b(ii)		X
b(iii)		X
b(iv)		X
b(v)		X
b(vi)		X
c		X

[illegible]

**52 a** Is the organization directly or indirectly affiliated with, or related to, one or more tax-exempt organizations described in section 501(c) of the Code (other than section 501(c)(3)) or in section 527? ▶ ☐

▶ ☐ Yes ☒ No

**b If "Yes," complete the following schedule**

N/A

[illegible]

## 2003 DEPRECIATION AND AMORTIZATION REPORT

FORM 990 PAGE 2

990

Asset No	Description	Date Acquired	Method	Life	Line No	Unadjusted Cost Or Basis	Bus % Excl	* Reduction In Basis	Basis For Depreciation	Accumulated Depreciation	Current Sec 179	Amount Of Depreciation
1	MANAGEMENT AND GENERAL OFFICE FURNITURE AND FIXTURES		SL	5.00	16	14,655.			14,655.	14,655.		0.
2	OFFICE FURNITURE AND FIXTURES		SL	5.00	16	24,605.			24,605.	24,605.		0.
3	COMPUTER - COMPU DYNE P100	12/31/96	SL	5.00	16	1,380.			1,380.	1,380.		0.
4	H P LASER JET	06/21/98	SL	5.00	16	1,150.			1,150.	1,150.		0.
5	OFFICE FURNITURE AND EQUIPMENT	06/15/00	SL	5.00	16	3,767.			3,767.	2,166.		1,601.
	* 990 PAGE 2 TOTAL					45,557.		0.	45,557.	43,956.	0.	1,601.
	MANAGEMENT AND GENERAL											
	* GRAND TOTAL 990 PAGE 2 DEPR					45,557.		0.	45,557.	43,956.	0.	1,601.

## FOOTNOTES

STATEMENT 1

## REPORTING OF DEFERRED REVENUE

DONATION FOR USE BY THE "SOUND SCIENCE IN THE LAW" PROGRAM

30,000.

THE ENTIRE AMOUNT OF \$30,000 IS RESTRICTED FOR USE IN 2004

## FORM 990

## SPECIAL EVENTS AND ACTIVITIES

STATEMENT 2

DESCRIPTION OF EVENT	GROSS RECEIPTS	CONTRIBUT. INCLUDED	GROSS REVENUE	DIRECT EXPENSES	NET INCOME
FUNDRAISING DINNER	118,657.		118,657.	35,146.	83,511.
TOTAL TO FORM 990, PART I, LINE 9	118,657.		118,657.	35,146.	83,511.

## FORM 990

## DEPRECIATION OF ASSETS NOT HELD FOR INVESTMENT

STATEMENT 3

DESCRIPTION	COST OR OTHER BASIS	ACCUMULATED DEPRECIATION	BOOK VALUE
OFFICE FURNITURE AND FIXTURES	14,655.	14,655.	0.
OFFICE FURNITURE AND FIXTURES	24,605.	24,605.	0.
COMPUTER - COMPUDYNE P100	1,380.	1,380.	0.
H P LASER JET	1,150.	1,150.	0.
OFFICE FURNITURE AND EQUIPMENT	3,767.	3,767.	0.
TOTAL TO FORM 990, PART IV, LN 57	45,557.	45,557.	0.

## SCHEDULE A

## OTHER INCOME

STATEMENT 4

DESCRIPTION	2002 AMOUNT	2001 AMOUNT	2000 AMOUNT	1999 AMOUNT
ATTNY FEES NORTH SHORE CONCRETE CASE	0.	0.	0.	231,000.
TOTAL TO SCHEDULE A, LINE 22	0.	0.	0.	231,000.

FEBRUARY, 2004

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**EIN # 23-2022920**

**Legal Activities in 2003**

**CORPORATE GOVERNANCE**

**Pereira v. Cogan** (U.S. Court of Appeals, 2<sup>nd</sup> Circuit)

ALF filed an *amicus* brief on behalf of the Corporate Law Departments Section of the Los Angeles County Bar Association and twelve current and former general counsels of major corporations in support of the appeal to the United States Court of Appeals for the Second Circuit by Philip Smith. The trial court found Smith liable for over \$20 million in connection with his alleged failures properly to discharge his duties as chief legal officer of Trace International Holdings, a closely-held Delaware company.

The case involves claims by the United States Bankruptcy Trustee against the majority shareholder, directors and officers of Trace, alleging that they breached their fiduciary duties to creditors and minority shareholders arising out of their alleged failure to adequately monitor and prevent "looting" of the company by the majority shareholder, CEO and Chairman, Marshall Cogan, through excessive compensation, illegal dividends, a share buy-back transaction, employment of Cogan's daughter, and loans to certain individuals.

Our brief argued that the Delaware Business Judgment Rule accords corporate officers a presumption of propriety where they do not breach a duty of loyalty to benefit themselves unless their conduct was grossly negligent and that the trial court effectively reversed the traditional role of the client and lawyer. The duty of a CLO established by the *Pereira* court is to be an all-knowing detective and infallible advisor. That standard is impossible for corporate legal officers to meet, and will not only unreasonably impose liability on CLOs, but may well deter competent persons from accepting in-house legal positions.

**This case is in the public interest because (i) the trial court misconstrued Delaware law; (ii) it is important to properly set forth the relationship between a corporate general counsel and the board of directors and allocate responsibility for corporate decisions appropriately; and (iii) imposing liability on a corporate legal officer on the basis used by the trial court will discourage competent and responsible individuals from assuming that position.**

**EQUAL PROTECTION AND DUE PROCESS**

***Deegan v. New Jersey Department of Personnel*** (U.S. District Court, New Jersey) (First Chair)

We have previously reported on this case. ALF is representing three New Jersey firefighter candidates suing the State of New Jersey and the United States, challenging the design, administration and scoring of the 1999 entry-level New Jersey firefighter exam.

Fact and expert discovery in this reverse discrimination in public employment case concluded in 2003 and cross-motions for summary judgment were fully briefed and submitted in 2003.

**This case is in the public interest because we seek to ensure equal treatment for all applicants for public employment, and seek to ensure that the best candidates for public safety positions are recruited and hired.**

***GEOD Corporation v. New Jersey*** (U.S. District Court, New Jersey) (First Chair)

In 2001 ALF, on behalf of GEOD Corporation, brought suit challenging New Jersey's Minority and Women's Business Enterprise Program and the New Jersey Department of Transportation's Disadvantaged Business Enterprise program as violations of the equal protection rights of GEOD, a white male-owned firm. GEOD's business is heavily concentrated in work as a "consultant" to either prime contractors or subcontractors on large scale public construction projects, such as roads, rail lines, subway lines, airports, harbor facilities, etc. As a result of New Jersey DOT's affirmative action programs, a substantial portion of those contracts had been awarded to minority owned firms. In many cases, GEOD was not even permitted to bid, because the aerial surveying work had been "carved out" by prime contractors as identifiable specialty work which "minority" firms had the capacity to perform and which could satisfy the prime contractor's obligation to utilize minority subcontractors. Because GEOD's work is so specialized its portion of the project was often not awarded on the basis of low bid.

The critical point, from ALF's perspective, was that New Jersey's "disparity study" was completed in 1992, and was based on 1987 business census data, data too old to be a proper basis for affirmative action minority and woman-owned business utilization on state funded contracts 15 years later; in addition, census data is inherently inadequate, because it does not provide any information about the ability or willingness of minority and woman-owned firms to perform state construction contracts (criteria which the U.S. Supreme Court deemed essential in *City of Richmond v. J.A. Croson*). Then-governor Whitman issued an executive order in April 2000 establishing a commission to undertake a new "disparity study," but the commission did not actually award a definitive contract for a new study until 2003 (ALF contended this was implicitly a concession that the 1992 study was obsolete by 2000).

Because this was a "first chair" case in which ALF represented a plaintiff, the case was extremely resource-intensive. Fact discovery was extensive: the State produced over 30,000 pages of documents, and ALF conducted depositions of more than 10 state officials. As counsel for the plaintiff, we retained an expert to prepare an extensive and detailed expert report critiquing the methodology and conclusion of the State's disparity study.

In July 2003, Judge Stanley Chesler of the U.S. District Court for New Jersey signed a Consent Decree in which New Jersey agreed to a permanent injunction against enforcement of the State's Set-Aside Act to the extent that the Act permits the State to set aside contracts for, or permits the State to establish contract targets or goals for utilization of, minority-owned business enterprises or woman-owned business enterprises. New Jersey is also required to achieve its disadvantaged-business enterprise goals on federally-funded projects using *race-neutral* means to the maximum extent possible, and its submissions to the U.S. Department of Transportation through 2008 must be vetted by GEOD and ALF before submission.

Immediately after the consent decree was entered, New Jersey's Attorney General was quoted in the press as conceding that "... this set-aside program could not survive constitutional scrutiny...." That is precisely the position GEOD and the Atlantic Legal Foundation had been taking during the two year litigation, and the State issued emergency and proposed permanent regulations establishing a race-neutral "emerging small business" program in which preferences are based solely on the size (in terms of annual sales) of the firm. State officials have noted that participation by minority-owned firms is actually greater under the race-neutral emerging small business program than it was under the previous race-conscious discriminatory program.

**This case is an illustration of the effective role a public interest law firm can play as an advocate for those whose voices would not otherwise be heard and whose important constitutional protections have been violated.**

**GEOD v. New Jersey Transit** (U.S. District Court, New Jersey) (First Chair)

As a follow-on to the *GEOD v. New Jersey* case, we started work on a similar lawsuit against New Jersey Transit, which is a public corporation that owns and operates commuter rail lines and commuter bus lines in New Jersey. On many of its engineering and design contracts (the type of contracts on which GEOD seeks to participate as a subcontractor of consultant) NJ Transit has set disadvantaged business enterprise ("DBE") participation "goals" ranging from 20% to 30%. NJ Transit's "goals" are based on the same indefensible 1992 "disparity study" that underpinned the State program and a 2002 "Draft Supplement."<sup>1</sup> NJ Transit's overall "DBE goal" has been 25% for several years, in sharp contrast to the 10% "goal" used by NJ DOT prior to the *GEOD v. New Jersey* settlement, based on the same "disparity study" and in the same market and for very similar services..

The vast majority of NJ Transit's funding is from U.S. Department of Transportation programs, and thus is subject to the US DOT "Disadvantaged Business Enterprise" "goals" and criteria set forth at 49 CFR Part 26, which sets out the guidelines for recipients of federal funds on how to run their DBE programs. The federal regulations establish an "aspirational" ten percent DBE participation for projects receiving federal funding, but the national percent goal "does not authorize or require recipients to set overall or contract goals at the ten percent level, or any other particular level...." and a number of states have set annual goals of less than ten percent. The federal regulations leave the calculation of appropriate goals, and means of achieving them, to state agencies and other entities that receive federal funding.

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<sup>1</sup> To the best of our knowledge, the "Draft Supplement" has never formally been adopted by NJ Transit.

NJ Transit's own "disparity study" shows that firms owned by one "presumptively disadvantaged" group – Asian Americans – are actually "overutilized" by NJ Transit or its prime contractors, and that another "presumptively disadvantaged" group – woman-owned firms – are "underutilized" by such a small degree that the "disparity" is statistically insignificant. NJ Transit has never sought to "narrowly tailor" its DBE program to include only groups that are underutilized to a statistically significant degree, to use "race neutral" means to the extent possible to achieve DBE participation (as mandated by the federal guidelines), nor has NJ Transit sought waivers, which are available under the federal guidelines, to exclude contracts that call for services in which DBE participation is already "overconcentrated."

**This case serves the public interest because a successful resolution will expand on the result of *GEOD v. New Jersey*, and will, for the first time, establish precedent requiring state "public benefit corporations" to comply with the "narrow tailoring" requirement articulated by the U.S. Supreme Court in *City of Richmond v. J.A. Croson* in connection with federally funded contracts.<sup>2</sup>**

**Gratz and Grutter v. Bollinger** (University of Michigan Affirmative Action Cases) (United States Supreme Court)

ALF filed an *amicus* brief on behalf of the Reason Foundation of Los Angeles in support of plaintiffs. Our brief provided statistics and other data showing that minority students admitted pursuant to "diversity" preferences have a significantly lower graduation rate, and significantly higher drop-out rate, than non-minority students, especially at public colleges and universities, and at Michigan itself, and that this could reinforce negative racial stereotype, a concern expressed by Justice Powell in *Bakke v. Regents of the University of California*.

**This case was in the public interest because we sought to ensure equal treatment of all applicants to a major public university.**

#### **LIMITED AND RESPONSIVE GOVERNMENT**

**Barklee Realty v. Pataki** (New York Court of Appeals).

This due process challenge to publication requirements for limited liability corporations (costs of up to \$1,640) to file lawsuits (not required of corporations, partnerships or LLPs), successful at the trial level, was reversed by the intermediate appellate court. Barklee Realty is pressing for review by the Court of Appeals. ALF's filed an *amicus* brief on behalf of three real-property owner trade associations.

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<sup>2</sup> The *Croson* case dealt with a local affirmative action program. *GEOD v. New Jersey* involves a state program. We hope and believe the *New Jersey Transit* case will be the first in which a federal court applies *Croson* to a the relatively new federal highway construction program enacted in the Transportation Equity Act for the 21st Century ("TEA-21") which was passed on June 9, 1998, and the regulations and guidelines issued by the Department of Transportation and the Department of Justice

**This case is in the public interest because the publication requirement for LLCs falls unevenly on a specific form of corporate organization, places an artificial barrier to the formation and existence of LLCs, and does not benefit the public.**

**Brody v. Gargano** (U.S. Court of Appeals, 2<sup>nd</sup> Circuit) (First Chair)

This is the remaining portion of the case against the Empire State Development Corporation challenging, on due process grounds, the notice provisions of the New York Eminent Domain Procedure Law, in which we are partnering with Institute for Justice. The case involving our client, Minic Custom Woodwork, was settled, but we remain co-counsel with Institute for Justice in the *Brody* case. After the last appeal to the Court of Appeals, in which certain procedural issues were decided adversely to the plaintiffs, the district court had dismissed the *Brody* case on standing grounds, finding that Brody had actual notice of ESDC's determination to condemn the Brody's property. We appealed, and the Second Circuit reversed and remanded, finding that there were issues of fact on the standing issue and that dismissal was not warranted.

**This case serves the public interest because the lack of adequate notice to property owners prior to the exercise of the state's eminent domain power deprives property owners of an effective means to challenge such takings.**

#### **CHOICE IN EDUCATION**

In 2003 ALF's work in this program area principally involved counseling or representing charter schools.

#### **Paterson Charter School for Urban Leadership**

In mid-August 2003, ALF was asked to assist this New Jersey charter school, located in Paterson, N.J., where the state had taken over operation of the public schools. We were advised that notwithstanding close state supervision this public school system was in a deplorable state. The need for a charter school was palpable. "PCSFUL" had compiled an impressive record in its short history; there is a long waiting list. Parental involvement is strong. Community support, both in the business and political communities, has been enthusiastic.

However, in early 2002, the State Office of School Funding found deficiencies in the school's administrative procedures. While a remedial plan was developed promptly, in February, 2003, the school was placed on probation for a period subsequently extended to June 30, 2003. As of June 30, the school's administration and board believed that all aspects of the remedial plan had been met. Nevertheless, without warning, on July 19, 2003, the Department of Education, revoked the charter, effective immediately.

ALF, working with McCarter & English, a leading New Jersey law firm working *pro bono*, represented PCSFUL on an appeal and a motion for a stay of the revocation order. We also prepared

a complaint and a motion for a preliminary injunction in state court.

Following a community confrontation with the Commissioner of Education and his staff, the leadership of PCSFUL was permitted to continue operating as an "academy" under the auspices of the Paterson School District. Core personnel were retained.

ALF has worked with the PCSFUL Board to develop a strategy to ensure that the charter would again be issued. Subsequently, the Commissioner advised that there would be no cooperation with regard to a new charter unless the appeal from the revocation order was withdrawn and the appeal was withdrawn to permit negotiations.

With the assistance of ALF, the PCSFUL Board adopted a plan to keep local politicians, clergy and parents abreast of the discussions with the Commissioner. A new charter has been drafted and the PCSFUL Board continues to respond to the Commissioner's concerns.

**Red Bank Litigation** (New Jersey Superior Court, Appellate Division)

ALF submitted an *amicus* brief on behalf of Excellent Education for Everyone, a coalition that is a leader of community groups focusing on public education alternatives.

The Red Bank appeal in the Appellate Division of the New Jersey Superior Court, raises a number of important issues which will impact other New Jersey charters, as evidenced by the participation of the Attorney General's office and, as *amicus*, the New Jersey Education Association and the ACLU. The State Board of Education granted the Red Bank Charter School's application to renew and extend its charter. The District Board argues that the charter should not have been renewed because enrollment of white children in the charter has increased segregation in the district school. It is also alleged that a trial-like procedure should have been used by the Commissioner of Education in extending the charter, permitting the District Board to participate. Finally, appellants contend that the charter's funding will deprive the district of funding, jeopardizing its ability to deliver a thorough and efficient education. These contentions were rejected by the Commissioner of Education and by the State Board of Education.

The Superior Court, Appellate Division has approved the State Board's determination. Plaintiff is currently seeking review in the Supreme Court of New Jersey.

**ALF's efforts to expand educational options for parents and to ensure parental choice serves the public interest because competition in education is the best way of ensuring improved school quality and improved student and teacher performance. Charter schools have been recognized by numerous states as a way of providing that needed competition, especially for failed or failing schools or school districts.**



**SOUND JUDICIAL ORGANIZATION**

ALF has undertaken a critical examination of the proposal by the Chief Judge of the New York Court of Appeals to restructure and consolidate New York's byzantine trial courts. The Office of Court Administration and the Chief Judge urge that the proposal will reduce or eliminate procedural confusion - - for example, currently litigants must resort to different courts to obtain full relief in domestic relations matters arising from the same facts - - and that the proposal will result in significant savings. Reports, studies and speeches addressing New York's needlessly complicated trial court structure over the past twenty-five years have argued that New York's antiquated trial court structure needs to be altered in a major way. Legislation proposed by the Chief Judge has been endorsed by a host of bar associations and civic groups, but is opposed by the New York State Supreme Court Justices' Association.

We have had several meetings have with key participants (Chief Administrative Judge Jonathan Lippman, Michael Cardozo, the Corporation Counsel of New York City, both of whom support the proposal, the president of the New York State Supreme Court Justices Association and the current and two past presidents of the New York City Supreme Court Justices Association, who oppose the proposal), the Executive Director of the Rockefeller Institute in Albany, which has been retained by the Office of Court Administration to prepare a study on the proposal, and a former aide to Governor Carey during whose term the last major court restructuring took place, and a former New York State Supreme Court Justice and the first statewide administrator of the New York court system, both of whom favor the restructuring proposal, and others.

ALF plans to issue a report with recommendations based upon our research.

**This project is in the public interest because it affects public access to, and perception of, the judicial system. ALF will bring an objective voice to the public debate about a vital issue that affects the public directly (if they are litigants or other users of judicial services), and indirectly (as taxpayers).**

**SOUND SCIENCE IN THE COURTS**

Since 1993, Atlantic Legal Foundation has been the leading public interest law firm active in promoting the use of sound science in the adjudicatory and regulatory process. To that end, we have represented numerous prominent scientists and scholars, including more than a dozen Nobel laureates, in the three leading U.S. Supreme Court decisions which have established the criteria for the admissibility of expert evidence in federal court cases: *Daubert v. Merrell Dow Pharmaceuticals* (1993), *General Elec. Co. v. Joiner* (1997) and *Kumho Tire Co. v. Carmichael* (1999). ALF's briefs were cited with approval in *Daubert* and *Kumho Tire*, demonstrating that our participation had a constructive impact in these important cases. In addition, over the last 10 years, the Foundation has

filed *amicus* briefs in numerous federal and state appellate courts, and its briefs have been cited as decisive or helpful to the Supreme Court of California in a case involving injuries claimed to have been caused by electromagnetic fields, and by the U.S. Court of Appeals for the Ninth Circuit in a case in which alleged exposure to a minuscule amount of radioactive material was claimed to have caused the plaintiff's cancer. ALF has added to its reputation as expert in issues involving the intersection of science and law, and we are regularly called upon to file *amicus* briefs, usually on behalf of very accomplished and distinguished scientists, in numerous product liability, toxic tort and other cases involving issues of medical or other scientific causation.

In 2003 we continued our activities in ensuring that sound science be used in litigation and in administrative law.

**Alcan Aluminum v. United States** (U.S. Supreme Court)

ALF submitted an *amicus* brief in support of Alcan's petition for *certiorari* to the United States Supreme Court, seeking review of the Court of Appeals' affirmance of a decision in the U.S. District Court for the Northern District of New York holding Alcan liable for discharging nickel and PCBs from a waste site in Oswego, New York. ALF addressed the "Daubert" sound science issue whether the trial court (and the Court of Appeals) improperly relied selectively on limited data proffered by the Government, and ignored 19 tests conducted by U.S. EPA and the New York State Department of Environmental Conservation themselves, which showed that the amount of nickel and PCBs in the groundwater at the site and in surrounding areas was no higher than "background" levels. We also highlighted the fact that after the case was fully briefed and argued to the Second Circuit, EPA itself issued a "guidance" document with respect to Superfund site clean-up that states that in deciding whether and how to remediate, the decision-maker should take into consideration background levels of pollutants, which contradicts the position EPA took throughout the litigation that there is no "background" level of man-made chemical compounds such as PCB. In January, 2004, however, the Supreme Court denied *certiorari*.

**Lockheed Martin Corporation et al., v. Superior Court of San Bernardino County**  
**(Carrillo v. Lockheed Martin)** (California Supreme Court)

In December, 2000 we filed an *amicus* brief on behalf of medical experts in epidemiology, toxicology and public health in the Supreme Court of the State of California in a case concerning the issue of the propriety of certifying a class action for the costs of "medical monitoring" of persons allegedly exposed to toxins in groundwater in their community who have not exhibited any symptoms of disease. Our brief argued that the plaintiffs failed to demonstrate predominance of common issues because each putative class member's actual toxic dosage was different because of varying intensity and duration of exposure, and that the medical expert testimony proffered in support of plaintiffs' application for class treatment was too qualified, tentative and conclusory to constitute substantial evidence that the residents could prove causation and damages by common

evidence, and questions respecting each resident's right to recover appeared so numerous and substantial as to render any efficiencies attainable through joint trial of common issues insufficient to make a class action advantageous. We also argued that the putative class members seeking medical monitoring for conditions caused by consumption of polluted groundwater needed to demonstrate that the need for future monitoring was a reasonably certain consequence of the toxic exposure, i.e., that they faced a significant, but not necessarily likely, risk of serious disease, and that the evidence did not support such a conclusion.

In March 2003 the California Supreme Court held that the plaintiffs failed to demonstrate predominance of common issues, and therefore class treatment was not required or appropriate.

**In re San Jose IBM Workers Litigation** (California Supreme Court)

In September 2002 we filed an "*amicus* letter" (an abbreviated brief in support of a petition for review by the California Supreme Court) on behalf of nine scientists with expertise in toxicology, epidemiology, public health, medical causation and risk analysis, in this case, which arises out of claims by workers at an IBM chip and motherboard plant that their exposure to numerous chemicals caused a diverse assortment of medical conditions. The narrow issue was whether the California trial court erred in refusing to conduct a hearing as to the admissibility of plaintiffs' expert evidence, instead allowing all of the expert testimony to go to the jury. We urged the California Supreme Court to grant review, to provide guidance to courts, litigants and others, to ensure that a uniform legal standard is applied, and that juries are not exposed to the undue influence of "experts" whose methods and theories are not accepted in the scientific community. We pointed out that the Court has previously recognized that "judicial caution" was necessary in deciding the admissibility of expert scientific testimony, and that it had recently reaffirmed the "austere standard" for admissibility, "general acceptance in the particular field," and had rejected the notion that traditional cross-examination and rebuttal of the "underlying scientific technique" on which contested expert testimony was based were adequate because it "might [merely] lessen the weight of the evidence but would not necessarily prevent its admissibility" finding those criteria preferable to simply submitting the matter to the trial court's discretion for decision in each case. We argued that it is essential that the court act as a gatekeeper to keep unreliable "science" evidence from the jury, and that as the California Supreme Court had noted in its most recent decision on the subject "The *Frye* rule ensures that judges and juries with little or no scientific background will not attempt to resolve technical questions on which not even experts can reach a consensus...."

In February 2004, after remand, a jury in the first two of the IBM worker cases found for IBM, and rejected plaintiffs' claims that IBM had concealed from them the potential risks of working at the IBM plant or that such employment resulted in their illnesses.

**Mold/Sound Science Project**

In 2003, ALF continued its initiative concerning litigation involving the alleged harmful health effects of indoor mold. The principal activity in 2003 consisted of enhancing and expanding ALF's mold/sound science website which is available on line at no charge.

**NFIB v. EPA** (U.S. District Court, District of Columbia) (First Chair)

Typically, ALF files *amicus* briefs in four to six high-profile "science" cases each year, and submits comments on proposed regulations or underlying scientific studies two or more times a year, as warranted. However, this "first chair" case, which has been on our docket for almost three years, we believe will be resolved in 2004. It is a case in which we hope two of our mandates – ensuring that principles and processes of science are correctly utilized in the legal system (in this case in the regulatory arena) and that government be responsible and responsive and not adopt or enforce regulations that are arbitrary, capricious or unduly burdensome – will be advanced.

On April 26, 2001, ALF, as attorneys for the National Federation of Independent Business ("NFIB"), a large trade association representing more than 500,000 small businesses, filed an action in the United States District Court for the District of Columbia against Christine Todd Whitman, as Administrator of the Environmental Protection Agency ("EPA"), and EPA, challenging the EPA's new lead reporting rule, which had become effective on April 17, 2001.

This case involves an EPA final rule, issued in the final days of the Clinton Administration, reducing the "manufacture, process, or otherwise use" reporting threshold for lead and lead compounds under the Toxics Release Inventory ("TRI") program to 100 pounds -- a reduction by a factor of 250 in the case of facilities that "manufacture or process" lead and by a factor of 100 in the case of facilities that "otherwise use" lead. 66 Fed. Reg. 4500 ("the Rule"). This action was taken based on EPA's view that "lead and lead compounds are (highly) PBT (persistent, bioaccumulative, toxic) chemicals." *Id.* at 4501. The Rule also eliminates the *de minimis* exemption for lead and lead compounds. The combined effect of reducing the reporting threshold and eliminating the *de minimis* exemption will be to subject perhaps tens of thousands of additional facilities to the burdens of (1) making "manufacture, process, or otherwise use" threshold determinations for lead and lead compounds, and (2) preparing and filing annual TRI reports. We contend that (1) the Rule is not based on sound science; (2) EPA did not seek independent peer review and refer the question of the scientific appropriateness of applying PBT criteria to metals to its Science Advisory Board (SAB) before deciding whether to include metals in any of the Agency's PBT programs or lists; (3) EPA did not follow the procedures mandated by the Regulatory Flexibility Act ("RFA") as amended by the Small Business Regulatory Enforcement Fairness Act; (4) the Rule suffers from a questionable evaluation of small business impacts and that EPA engaged in virtually no small business consultation before publishing the proposed rule; (5) EPA's evaluation of the

overall costs and benefits of the Rule is questionable; and, (6) the Lead Reporting Rule is retroactive, and thus violates the Administrative Procedures Act.

In 2003 our motion to supplement the administrative record was granted for the most part by the district court; the government's subsequent motion to further supplement the record has been granted. In April 2004 the Court set a briefing schedule for dispositive motion. NFIB's brief is due July 30, EPS's brief is due September 30, and reply briefs are due in the late Fall.

**Roberti v. Andy's Termite and Pest Control** (California Supreme Court)

In late January we filed an "amicus letter," in support of defendant's petition to the California Supreme Court asking leave to appeal a decision of the intermediate Court of Appeal which reversed a trial court's ruling excluding the testimony of plaintiff's key medical causation experts.

Roberti, a child, sought damages for his autism, allegedly caused by his *in utero* exposure to the pesticide "Dursban." There is no dispute that Dursban was applied at his residence by Andy's Termite & Pest Control.

The trial court granted defendant's motion *in limine* to exclude the opinions of plaintiffs experts that the Dursban caused plaintiff's autism, and dismissed the lawsuit. The trial court excluded the plaintiffs expert testimony on two grounds: (1) unreliable foundation, and (2) novel unsupported scientific theory and improper scientific procedures under *People v. Kelly* (1976) 17 Cal.3d 24, 130 Cal.Rptr. 144, California's version of *Frye v. United States*, the predecessor to *Daubert*. The Court of Appeal reversed and held that expert medical and scientific opinion testimony which does not rely on "novel" technology or techniques is not subject to the admissibility test of *People v. Kelly*, a case roughly analogous to *Frye v. United States*, the predecessor of *Daubert* in the federal courts.

In our "amicus letter" we made two arguments: *First*, the Court of Appeal should be reversed because the trial court was correct in holding that the reliability requirement of Section 801 of the California Evidence Code is independent of the *Kelly-Frye* "general acceptance" test, the California Supreme Court has recognized that Section 801 imposes an obligation on the trial court to scrutinize the foundation of expert testimony separate and apart from *Kelly-Frye*, and under Section 801 an expert's opinion would be inadmissible if the expert's use of the data or methodology relied upon is "professionally 'unreasonable'" even if it is generally of a type commonly relied upon in the field. *Second*, the California Supreme Court should resolve a conflict among the different Courts of Appeal, because just two weeks after the Second Appellate District decided *Roberti*, the Fourth Appellate District decided *Jennings v. Palomar Pomerado Health Systems, Inc., et al.*, 2003 WL 22924973, *rehearing denied* (Jan. 8, 2004) in which the court independently considered the admissibility of expert testimony on medical causation, and held that California Evidence Code § 801 requires a trial court to make a determination whether an expert's opinion is based upon sound

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reasoning and exclude such testimony if it is not. Unfortunately, on March 18, 2004 the California Supreme Court denied the petition for review.

**ALF's participation in these cases and its "mold project" are in the public interest because they are part of ALF's "sound science in the law" project, which seeks to ensure that the proper scientific method is used in deciding cases.**